EXHIBIT H

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22   UNITED STATES DISTRICT COURT
                NORTHERN DISTRICT OF CALIFORNIA
23   OAKLAND DIVISION

24 **ORACLE USA, INC.,** *et al.***,**	**No. 07-CV-01658 PJH (EDL)**
25 **Plaintiffs,**	TRIAL STIPULATION AND [~~PROPOSED~~]
v.	ORDER NO. 3 REGARDING CERTAIN
26	FACTS
SAP AG, *et al.***,**	
27	
Defendants.	
28	

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TRIAL STIPULATION AND [PROPOSED] ORDER NO. 3 REGARDING CERTAIN FACTS

1   Plaintiffs Oracle USA, Inc. ("Oracle USA"), Oracle International Corporation

2   ("OIC"), and Siebel Systems, Inc. ("SSI"; and, together with Oracle USA and OIC, "Oracle")

3   and Defendants SAP AG, SAP America, Inc., and TomorrowNow, Inc ("TN"; and, together with

4   SAP AG and SAP America, Inc., "Defendants"; and, all together with Oracle, the "Parties"),

5   jointly enter this Stipulation and Order (the "Stipulation").

6   WHEREAS, the Parties seek to narrow the issues in dispute for trial;

7   **NOW, THEREFORE, THE PARTIES HEREBY STIPULATE**, through their

8   respective counsel of record, as follows:

9   **I.   DEFINITIONS**

10   1.   "Copy," used as a noun, means a reproduction of, a derivative work of, a

11   distribution of, or a public display of at least a portion of any Oracle Enterprise Software, Oracle

12   Database Software, Oracle Install Software or Oracle Updates and Support Materials that

13   embody one or more Stipulated Registered Works. "Copy," used as a verb, means to reproduce,

14   to create a derivative work from, to distribute, or to publicly display at least a portion of any

15   Oracle Enterprise Software, Oracle Database Software, Oracle Install Software or Oracle

16   Updates and Support Materials that embody one or more Stipulated Registered Works.

17   2.   "Oracle Database Software" means Oracle's Relational Database Management

18   System software.

19   3.   "Oracle Enterprise Software" means Oracle's J.D. Edwards Software, Oracle's

20   PeopleSoft Software, and/or Oracle's Siebel Software, or portions thereof.

21   4.   "Oracle Install Software" means install media in the form of a CD or DVD, an

22   electronic image of a CD or DVD, a binary executable, or a compressed file that, when run or

23   executed, creates one or more instances of Oracle Enterprise Software or Oracle Database

24   Software.

25   5.   "Oracle's J.D. Edwards Software" means Oracle's J.D. Edwards-branded

26   enterprise application software.

27   6.   "Oracle's PeopleSoft Software" means Oracle's PeopleSoft-branded enterprise

28   application software.

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TRIAL STIPULATION AND [PROPOSED] ORDER NO. 3 REGARDING CERTAIN FACTS

1 7. "Oracle's Siebel Software" means Oracle's Siebel-branded enterprise application

2 software.

3 8. "Oracle Updates and Support Materials" means some or all of the program

4 updates, software updates, bug fixes, patches, custom solutions, and instructional materials

5 created or owned by Oracle, or derived from, copied from, or based on any such materials,

6 including any such materials generated or distributed by TN, for PeopleSoft-branded, J.D.

7 Edwards-branded, and Siebel-branded products.

8 9. "Stipulated Registered Works" means Oracle's copyright registrations for Oracle

9 Enterprise Software, Oracle Database Software and Oracle Updates and Support Materials as

10 listed in Attachment A.

11 **II. FACTS**

12 **A. Interpretation under the Case Management and Pretrial Order**

13 10. Sections I and II.B-II.F of this Stipulation shall be considered "relevant and

14 undisputed facts to which the parties will stipulate for incorporation into the trial record without

15 the necessity of supporting testimony or exhibits." See Case Management and Pretrial Order,

16 Dkt. 84, at 3(a)(iii).

17 **B. TN's Computers and Network**

18 11. The counts of software Copies and downloads reflected in this Stipulation are

19 minimum numbers. The actual numbers may be higher. TN had software other than Oracle

20 Enterprise Software, Oracle Install Software, Oracle Database Software and Oracle Updates and

21 Support Materials on its systems. Nothing in this or any other Stipulation shall be construed to

22 mean that any material other than Copies of these Oracle materials matches the Stipulated

23 Registered Works, or any part of the Stipulated Registered Works.

24 12. TN owned dozens of computers, including servers, desktop computers and laptop

25 computers, on which Oracle Enterprise Software, Oracle Updates and Support Materials and

26 Oracle Database Software were located.

27 13. After March 1, 2005, Oracle Enterprise Software, Oracle Updates and Support

28 Materials and Oracle Database Software were Copied onto or installed onto TN's computers.

TRIAL STIPULATION AND [PROPOSED] ORDER NO. 3 REGARDING CERTAIN FACTS

1 For example:

2   a. TN stored at least 214,807 files (over 695 GB in size) and 602 libraries

3   containing Oracle Updates and Support Materials on TN's IBM AS/400

4   computer, which was first brought into service by TN after March 1, 2005.

5   b. All copies of Oracle's J.D. Edwards Software ever present on TN's AS/400,

6   including those on a server hosted by the AS/400 (the JD-WSVR01), were

7   copied onto or installed on TN's AS/400 after March 1, 2005.

8   c. All copies of Oracle Updates and Support Materials ever present on TN's

9   AS/400 were copied onto the AS/400 after March 1, 2005.

10   d. TN stored at least 273,663 files (over 154 GB in size) containing Oracle

11   Updates and Support Materials on TN-FS01, a computer that was not brought

12   into service until after March 1, 2005.

13   e. All copies of Oracle Enterprise Software, Oracle Database Software, and

14   Oracle Updates and Support Materials ever present on TN-FS01 were copied

15   onto TN-FS01 after March 1, 2005.

16   **C.**   **Copies of Oracle Enterprise Software**

17   14. TN obtained Oracle Install Software through its customers. TN thereafter made

18 Copies of Oracle Enterprise Software using the Oracle Install Software. TN called these Copies

19 of software "environments." Some of these environments were made in order to provide service

20 to TN's other customers.

21   15. Some environments were "live" environments that were complete installations of

22 products such as PeopleSoft HRMS 8.8 or JDE EnterpriseOne XE and were available for

23 immediate use by TN employees. Others were backups consisting of zipped or compressed

24 Copies that would need to be restored before they were available for use by TN employees. Both

25 the live and backup environments were Copies of Oracle's Enterprise Software. When TN

26 restored backup environments onto its computer systems, it made additional Copies of Oracle's

27 Enterprise Software.

28   16. TN made at least 6,189 Copies of Oracle's PeopleSoft Software. Each such copy

TRIAL STIPULATION AND [PROPOSED] ORDER NO. 3 REGARDING CERTAIN FACTS

1   constituted an infringement of one or more of the particular Stipulated Registered Works listed in

2   Attachment A, Table A-1. These 6,189 Copies include at least 566 live environment Copies,

3   3,141 backup Copies, and 2,482 restore Copies. TN also made at least 29 Copies of Oracle's

4   J.D. Edwards Software, each of which constituted an infringement of one or more of the

5   particular Stipulated Registered Works listed in Attachment A, Tables A-3 and A-4. And, TN

6   made at least 31 Copies of Oracle's Siebel Software, each of which constituted an infringement

7   of one or more of the particular Stipulated Registered Works listed in Attachment A, Table A-6.

8
9   **D.   Copies of Oracle Enterprise Software and Oracle Database Software from Oracle Install Software**

10 17.   TN temporarily stored some electronic Copies of Oracle Install Software on its

11 computer systems in an area it referred to as the "CD Client Jukebox" (the "TN CD Client

12 Jukebox"). TN stored in the TN CD Client Jukebox at least 127 Copies of Oracle Enterprise

13 Software and Oracle Database Software.

14 18.   TN Copied CDs of Oracle Enterprise Software and Oracle Database software,

15 placed its own labels on the Copies, and stored them in a set of binders (the "TN CD Binders").

16 Attachment B is three photographs that fairly and accurately represent the TN CD Binders as

17 they were kept by TN. TN stored at least 727 Copies of Oracle Enterprise Software or Oracle

18 Database Software in the TN CD Binders.

19 19.   The Copies of Oracle Enterprise Software and Oracle Database Software stored in

20 the TN CD Client Jukebox and the TN CD Binders infringed one or more of the particular

21 Stipulated Registered Works listed in Attachment A, Tables A-1, A-3, A-6 and A-8.

22 **E.   Copies of Oracle Updates and Support Materials and of Component Files**

23 20.   Of the Oracle Updates and Support Materials that TN downloaded from Oracle's

24 websites, at least 826,905 were Copies of Oracle Updates and Support Materials included within

25 the Stipulated Registered Works listed in Attachment A, Tables A-1, A-2, A-5 and A-7. Many

26 of these Copies constituted infringements of one or more of the particular Stipulated Registered

27 Works listed in Attachment A, Tables A-1, A-2, A-5 and A-7.

28 21.   At least 39,349 Copies made by TN of Oracle Updates and Support Materials

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1   infringed one or more of the Stipulated Registered Works listed in Attachment A, Tables A-3

2   and A-4, as follows:

3   a.   TN made at least 31,334 Copies of Oracle Updates and Support Materials

4   by downloading those Copies in excess of that to which TN customers

5   Merck, Oce Technologies, SPX Cooling, SPX Flow, SPX Weil-McLain,

6   Yazaki North America and Metro Machine had told TN that they were

7   licensed;

8   b.   TN made at least 5,442 Copies of Oracle Updates and Support Materials by

9   downloading those Copies from Oracle's website into a generic download

10   library—not a customer-specific library—at TN, and then further Copying

11   them into a customer-labeled folder for at least nine customers, including

12   customer Praxair; and

13   c.   TN made at least 2,573 Copies of Oracle Updates and Support Materials by

14   downloading those Copies from Oracle's website and Copying them into a

15   folder for TBC Corp., which provided the download user ID and password

16   to TN, but never became a TN customer.

17   **F.   TN's Business Model**

18   22.   TN had access to Oracle Enterprise Software, Oracle Database Software and

19   Oracle Updates and Support Materials, and Install Software embodying many of the Stipulated

20   Registered Works.

21   23.   TN's support for some of its customers involved TN's use of other customers'

22   software.

23   24.   TN infringed some or all of the Stipulated Registered Works after Oracle filed

24   this lawsuit on March 22, 2007.

25   **III.   ADMISSIBILITY OF EVIDENCE**

26   25.   The Parties agree that Attachment A and Attachment B shall be admitted into

27   evidence at trial.

28

IV.   APPLICABILITY

26.   The Parties reach this stipulation for purposes of this action only, and this stipulation has no force or effect in any other proceeding or jurisdiction.

27.   Nothing in this Stipulation is intended to, or does, alter or change in any way Trial Stipulation And Order No.1 Regarding Liability, Dismissal of Claims, Preservation of Defenses, and Objections to Evidence at Trial (D.I. 866).

DATED: September 28, 2010   BINGHAM McCUTCHEN LLP

                                              By: /s/ Geoffrey M. Howard

                                                     Geoffrey M. Howard
                                                     Attorneys for Plaintiffs
                                              Oracle USA, Inc., Oracle International
                                              Corporation, and Siebel Systems, Inc.

In accordance with General Order No. 45, Rule X, the above signatory attests that concurrence in the filing of this document has been obtained from the signatory below.

DATED: September 28, 2010   JONES DAY

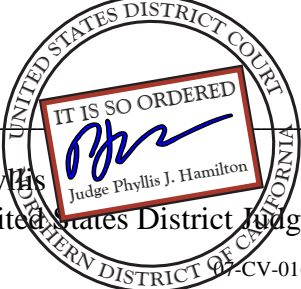   By: /s/ Scott W. Cowan

                                                     Scott W. Cowan
                                                     Attorneys for Defendants
                                              SAP AG, SAP America, Inc., and
                                                     TomorrowNow, Inc.

IT IS SO ORDERED.

Dated: September 29, 2010

                                              _____
                                              Phyllis
                                              United States District Judge

                                                                    07-CV-01658 PJH (EDL)

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TRIAL STIPULATION AND [PROPOSED] ORDER NO. 3 REGARDING CERTAIN FACTS

1   **ATTACHMENT A**

Title of Work	Date of Registration	Registration Number
PeopleSoft 8 Customer Relationship Management	September 27, 2001	TX-5-456-777
PeopleSoft 8.8 Customer Relationship Management	June 11, 2004	TX 6-015-317
PeopleSoft 8.8 Enterprise Performance Management	June 11, 2004	TX-5-993-616
PeopleSoft Financials, Distribution & Manufacturing 7.5	December 15, 1998	TX 4-792-574
PeopleSoft 8 Financials and Supply Chain Management: Service Pack 2	September 27, 2001	TX-5-456-780
PeopleSoft 8.4 Financials and Supply Chain Management	August 5, 2002	TX-5-586-247
PeopleSoft HRMS 7.0	December 15 1998	TX 4-792-577
PeopleSoft HRMS 7.5	December 15, 1998	TX 4-792-575
PeopleSoft 8 HRMS SP1	March 26, 2001	TX 5-501-312
PeopleSoft 8.3 HRMS	February 1, 2002	TX 5-469-032
PeopleSoft 8.8 HRMS	June 11, 2004	TX 6-093-947
PeopleSoft 8 Student Administration Solutions	November 30, 2001	TX 5-431-289
PeopleTools 7.5	November 20, 1998	TX 4-792-578
PeopleTools 8.10	September 5, 2000	TX 5-266-221
PeopleTools 8.4	August 5, 2002	TX 5-586-248
PeopleSoft 8.1 Customer Relationship Management	March 20, 2002	TX 5-493-450
PeopleSoft 8 EPM SP3	March 30, 2001	TX 5-345-698
PeopleSoft 8.3 Enterprise Performance Management	March 11, 2002	TX 5-485-839
PeopleSoft 7.0 financials, distribution & manufacturing 7.0	December 15, 1998	TX 4-792-576
PeopleSoft Financials and Supply Chain Management (FIN/SCM) 8.0	November 20, 2000	TX 5-291-439
PeopleSoft 8 FIN/SCM SP1	March 26, 2001	TX 5-501-313
PeopleSoft HRMS 8.0	November 20, 2000	TX 5-291-440
PeopleTools 8.0	September 5, 2000	TX 5-266-222
PeopleSoft Pension Administration 7	June 21, 1999	TX 3-772-290
PeopleSoft Payroll 7	June 22, 1999	TX 4-501-140
PeopleSoft Payroll Interface 7	June 22, 1999	TX 4-501-138
PeopleSoft Time and Labor 7.0	June 28, 1999	TX 4-994-866
PeopleSoft Benefits Administration 7.0	June 15, 1999	TX 4-258-824
PeopleSoft Human Resources 7	June 28, 1999	TX 4-994-865
PeopleSoft Payroll Interface 7 Higher Education	June 28, 1999	TX 5-013-124
PeopleSoft Time and Labor 7	June 28, 1999	TX 5-013-128
PeopleSoft Benefits Administration 7.50	June 14, 1999	TX 5-072-090
PeopleSoft Payroll Interface 7.50	June 21, 1999	TX 3-772-292
PeopleSoft Pension Administration 7.50	June 21, 1999	TX 3-772-291
PeopleSoft Human Resources 7.50	June 28, 1999	TX 5-013-123
PeopleSoft Payroll 7.50	June 28, 1999	TX 5-013-125
PeopleSoft Time and Labor 7.50	June 28, 1999	TX 4-994-867

Table A-1: PeopleSoft Application Registrations

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TRIAL STIPULATION AND [PROPOSED] ORDER NO. 3 REGARDING CERTAIN FACTS

1

Title of Work	Date of Registration	Registration Number
Database of Documentary Customer Support Materials for PeopleSoft Software	July 1, 2009	TXu1-607-454
PeopleTools Third Party Daylight Saving Time Required Modifications	April 26, 2007	TX 6-541-019
PeopleTools Third Party Daylight Saving Time Required Modifications (Revised)	April 26, 2007	TX 6-541-018
PeopleSoft 8.01 & 8.31 Payroll Tax Update 05-F Year-End Processing: Canada	May 2, 2008	TX 6-838-549
PeopleSoft Payroll 1200457000 - User Documentation	May 2, 2008	TX 6-838-537
PeopleSoft Application Update Installation Instructions (UPD595817)	May 2, 2008	TX 6-838-544

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Table A-2: Oracle Updates and Support Materials Registrations for Oracle's PeopleSoft-branded Products

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Title of Work	Date of Registration	Registration Number
Initial release of JD Edwards EnterpriseOne Xe	April 26, 2007	TX 6-541-033
Initial release of JD Edwards EnterpriseOne 8.0	April 26, 2007	TX 6-541-050
Initial release of JD Edwards EnterpriseOne 8.10	April 26, 2007	TX 6-541-038
Initial release of JD Edwards EnterpriseOne 8.11	April 26, 2007	TX 6-541-028
Initial release of JD Edwards EnterpriseOne 8.12	April 26, 2007	TX 6-541-041
Initial release of JD Edwards World A7.3	April 26, 2007	TX 6-541-029
Initial release of JD Edwards World A8.1	April 26, 2007	TX 6-541-047
Current development environment for JD Edwards EnterpriseOne Xe	April 26, 2007	TXu1-345-109
Current development environment for JD Edwards EnterpriseOne 8.0	April 26, 2007	TXu1-345-111
Current development environment for JD Edwards EnterpriseOne 8.9	April 26, 2007	TXu1-345-112
Current development environment for JD Edwards EnterpriseOne 8.10	April 26, 2007	TXu1-345-113
Current development environment for JD Edwards EnterpriseOne 8.11	April 26, 2007	TXu1-345-114
Current development environment for JD Edwards EnterpriseOne 8.11 SP1	April 26, 2007	TXu1-345-115
Current development environment for JD Edwards EnterpriseOne 8.12	April 26, 2007	TXu1-346-350
Current development environment for JD Edwards World A7.3	April 26, 2007	TXu1-345-110
Current development environment for JD Edwards World A8.1	May 1, 2007	TX 6-545-422
Initial release of JD Edwards EnterpriseOne 8.9	April 26, 2007	TX 6-541-049
Initial release of JD Edwards EnterpriseOne 8.11 SP1	April 26, 2007	TX 6-541-040
Initial release of JD Edwards World A9.1	April 26, 2007	TX 6-541-030
Accounts Payable program	March 7, 1995	TXu 619-320
Accounts Receivable program	March 7, 1995	TXu 619-312
Capacity Requirements Planning program	March 7, 1995	TXu 619-307
Configuration Management program	March 7, 1995	TXu 619-305

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TRIAL STIPULATION AND [PROPOSED] ORDER NO. 3 REGARDING CERTAIN FACTS

	Title of Work	Date of Registration	Registration Number
1	EDI Interface (6) program	March 7, 1995	TXu 619-304
2	Enterprise Facility Planning program	March 7, 1995	TXu 619-311
3	Equipment Management (5) program	March 7, 1995	TXu 619-309
	Financial Modeling, Budgeting & Allocations program	March 7, 1995	TXu 619-321
4	Financial Reporting (FASTR) program	March 7, 1995	TXu 619-318
5	General Ledger & Basic Financial program	March 7, 1995	TXu 619-310
	Inventory Management program	March 7, 1995	TXu 619-314
6	Master Production Scheduling program	March 7, 1995	TXu 619-306
	Product Data Management program	March 7, 1995	TXu 619-317
7	Purchase Order Processing program	March 7, 1995	TXu 619-316
	Sales Order Processing/Sales Analysis program	March 7, 1995	TXu 619-315
8	Shop Floor Control program	March 7, 1995	TXu 619-303
	Warehouse Management program	March 7, 1995	TXu 619-313
9	WorldCASE Development Environment program	March 7, 1995	TXu 619-308
	WorldCASE Foundation Environment (3) program	March 7, 1995	TXu 619-319

Table A-3: J.D. Edwards Application Registrations

	Title of Work	Date of Registration	Registration Number
13	Cumulative Update 8 for JD Edwards EnterpriseOne Xe	April 26, 2007	TX 6-541-048
14	Cumulative Update 1 for JD Edwards EnterpriseOne 8.0	April 26, 2007	TX 6-541-034
15	Cumulative Update 2 for JD Edwards EnterpriseOne 8.10	April 26, 2007	TX 6-541-032
16	Cumulative Update 1 for JD Edwards EnterpriseOne 8.12	April 26, 2007	TX 6-541-042
17	Cumulative Update 16 for JD Edwards World A7.3	April 26, 2007	TX 6-541-031
18	Cumulative Update 6 for JD Edwards World A8.1	May 1, 2007	TX 6-545-421
19	Cumulative Update 1 for JD Edwards EnterpriseOne 8.11 SP1	April 26, 2007	TX 6-541-039

Table A-4: J.D. Edwards Cumulative Update Registrations

	Title of Work	Date of Registration	Registration Number
22	Database of Documentary Customer Support Materials for J.D. Edwards Software	July 1, 2009	TXu1-607-455
23	Changes to Daylight Savings Time for 2007 (DST)	April 26, 2007	TX 6-541-025
24	ESU for JD Edwards EnterpriseOne Xe	May 3, 2007	TX 6-541-051
	ESU for JD Edwards EnterpriseOne 8.0	April 26, 2007	TX 6-541-046
25	ESU for JD Edwards EnterpriseOne 8.9	April 26, 2007	TX 6-541-036
	ESU for JD Edwards EnterpriseOne 8.10	April 26, 2007	TX 6-541-037
26	ESU for JD Edwards EnterpriseOne 8.11	April 26, 2007	TX 6-541-035
	ESU for JD Edwards EnterpriseOne 8.11 SP1	April 26, 2007	TX 6-541-027
27	ESU for JD Edwards EnterpriseOne 8.12	April 26, 2007	TX 6-541-045
	Code Change for JD Edwards World A7.3	April 26, 2007	TX 6-541-043
28	Code Change for JD Edwards World A8.1	April 26, 2007	TX 6-541-044

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Title of Work	Date of Registration	Registration Number
E1: 07/77: Quantum for Payroll Tax v.280	April 26, 2007	TX 6-541-022
E1: 1099: Year 2006 1099 ESUs	April 26, 2007	TX 6-541-024
EAP WTHD06: 1099 IRS changes for the year 2006	April 26, 2007	TX 6-541-023
JD Edwards World -- 1099 Changes for Tax Year 2006	April 26, 2007	TX 6-541-026
ECRM89: Common Errors on Mobile Sales	April 26, 2007	TX 6-541-020
GM--Grants issues resolved by FMS ESA 8.9 Bundle #10-653723 (Oct 06)	April 26, 2007	TX 6-541-021

Table A-5: Oracle Updates and Support Materials Registrations for Oracle's J.D. Edwards-branded Products[1]

Title of Work	Date of Registration	Registration Number
Siebel 6.3 Initial Release and Documentation	June 29, 2009	TX 6-941-989
Siebel 7.0.5 Initial Release and Documentation	June 29, 2009	TX 6-941-988
Siebel 7.5.2 Initial Release and Documentation	June 29, 2009	TX 6-941-990
Siebel 7.7.1 Initial Release and Documentation	June 29, 2009	TX 6-941-993
Siebel 7.8 Initial Release and Documentation	June 29, 2009	TX 6-941-995
Siebel 8.0 Initial Release and Documentation	June 29, 2009	TX 6-942-000
Siebel 8.1.1 Initial Release and Documentation	June 29, 2009	TX 6-942-001

Table A-6: Siebel Application Registrations

Title of Work	Date of Registration	Registration Number
Database of Documentary Customer Support Materials for Siebel Software	July 1, 2009	TXu1-607-453

Table A-7: Oracle Updates and Support Materials Registrations for Oracle's Siebel-branded Products

Title of Work	Date of Registration	Registration Number
Oracle 8i Enterprise Edition, release 2 (8.1.6)	February 2, 2001	TX 5-222-106
Oracle9i Database Enterprise : Edition Release 2	June 13, 2003	TX 5-673-282
Oracle Database 10g: Release 2	June 29, 2009	TX 6-942-003
Oracle Relational Database Management System (RDBMS): Release 8.0.4	November 21, 2001	TX 5-392-842
Oracle Relational Database Management System (RDBMS), Release 8.0.5	November 21, 2001	TX 5-392-861
Oracle9i Database Enterprise : Edition Release 1	June 13, 2003	TX 5-673-281
Oracle Database 10g: Release 1	January 16, 2009	TX 6-938-648

Table A-8: Oracle Database Registrations

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[1] The Cumulative Updates, separately listed in Table A-3, are also Oracle Update and Support Materials for Oracle's J.D. Edwards-branded products.

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TRIAL STIPULATION AND [PROPOSED] ORDER NO. 3 REGARDING CERTAIN FACTS

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ATTACHMENT B

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